IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RFA No.139 of 1997

Judgment Reserved on: 11.10.2006.

Date of decision: 20.10.2006

Narinder Mohan Gupta & Others. **….Appellants.**

Versus

Nand Lal Sharma **….Respondent.**

Coram

The Hon'ble Mr.Justice Deepak Gupta, J.

Whether approved for reporting ?[1]

For the Appellants: **Mr.Bhupender Gupta, Senior Advocate with Mr.Janesh Gupta, Advocate.**

For the Respondent: **Mr.K.D. Sood, Advocate.**

Deepak Gupta,J.

The plaintiffs, (appellants herein), filed a suit for recovery of Rs.five lacs against the defendant, (respondent herein).

The case of the plaintiffs is that they are owners in possession of an orchard known as "Manohar Orchard" in Tehsil and District Kullu. The defendant entered into an agreement on 12.8.1993 with Narender Mohan Gupta, plaintiff No.1 and agreed to purchase the apple crop of the said orchard for a total consideration of Rs.12,50,000/- As per the terms of the agreement, Rs.four lacs were to be paid on 14.8.1993, Rs.three lacs on

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

25.8.1993, Rs.three lacs on 5.9.1993 and the balance amount of Rs.2,50,000/- on 15.9.1993. There is no dispute between the parties that Rs.seven lacs were paid towards the sale agreement. The plaintiffs stated that a balance amount of Rs.5,50,000/- was due to them, but they have only filed suit for a sum of Rs.five lacs. They have also claimed future interest at the rate of 18% per annum.

The defendant has not denied the execution of the agreement. His case is that the agreement was got signed from him under misrepresentation. According to him, though plaintiffs No.2 and 3 are also owners of various portions of the orchard, but they never entered into any contract with him and plaintiff No.1 had no written authority to enter into the agreement on their behalf. The case of the defendant also is that plaintiffs No.2 and 3 obstructed in the work of removal of the apple crop and they did not permit the defendant to harvest the apple crop from the land which was exclusively owned by the plaintiffs No.2 and 3 and even in the joint land he was only permitted to harvest 1/3rd of the crop. The defendant has also set up a plea that at the time of execution of the agreement he was told that there are 1600 fruit bearing plants in the orchard, but in actual fact there were only 1200 plants.

The learned Court below dismissed the suit of the plaintiffs. The Court below held that the plaintiff No.1 had no authority to execute the agreement on the part of plaintiffs No.2 and 3. The learned trial Court has also been swayed by the fact that in the agreement dated 12.8.1993 there was a condition that in case the defendant failed to pay the amount of installments by the dates stipulated in the agreement, the plaintiffs would have a right to cancel the agreement and to restrain the defendant from removing the crop.

I have heard Shri Bhupender Gupta, learned Senior Counsel for the plaintiffs and Shri K.D. Sood, learned counsel for the respondent. I have also gone through the entire record of the case.

The agreement between the parties is not denied. The terms of the agreement are not in dispute. The dispute revolves solely around the following two questions:

(1) Whether the plaintiff No.1, on behalf of plaintiffs No.2 and 3, had no right or authority to enter into the agreement and if so, its effect?

(2) Whether the plaintiffs No.2 and 3 interfered or obstructed the defendant from harvesting the apple crop?

As far as the first question is concerned, there is no dispute that the plaintiff No.1 had not been authorised by a Power of Attorney or any other written instrument to enter into the agreement on behalf of plaintiffs No.2 and 3. This is not denied by the plaintiffs themselves. However, all the plaintiffs are brothers and according to plaintiffs No.2 and 3, they had authorised plaintiff No.1 to enter into the agreement on their behalf. It would also be pertinent to remember that the defendant was not a stranger and was admittedly aware of the fact that the plaintiffs No.2 and 3 were also owners of the orchard. Plaintiffs No.2 and 3 have not challenged the authority of plaintiff No.1. They have not, at any stage, taken up the stand that the plaintiff No.1 was not authorised on their behalf. Therefore, in my opinion, the mere fact that plaintiff No.1 was not authorised by a Power of Attorney or other instrument is not sufficient to hold that the agreement was void especially when the defendant himself was aware of the fact that the plaintiff No.1 was not the sole owner of the orchard. The defendant is a neighbour of the plaintiffs and he knew all the brothers. In case he wanted to verify whether plaintiffs No.2 and 3 had authorised plaintiff No.1, he could have verified the fact before signing the agreement.

Similarly, the stand of the defendant that he was made to sign the agreement under misrepresentation regarding the number of trees cannot be accepted. He being a neighbour of the plaintiffs and residing in the same area should have made suitable inquiries and should have ascertained as to what is the apple crop which he is purchasing.

The main question which arises and which has to be decided in the present case is with regard to the fact whether the defendant was in fact obstructed by the plaintiffs No.2 and 3 while plucking/harvesting the apple crop. Plaintiff No.1 has obviously stated that nobody obstructed the defendant. The defendant appeared as his sole witness and according to him he was obstructed by plaintiffs No.2 and 3. The plaintiff No.3 appeared as PW-4 in rebuttal and he stated that neither he nor plaintiffs No.2 ever obstructed the defendant. According to the plaintiffs the defendant continued to harvest the crop till late October/beginning November.

The learned trial Court in my view has totally mis-appreciated the evidence. Once the agreement stands proved and it also stands proved that the plaintiffs No.2 and 3 have not in any manner challenged the authority of the plaintiff No.1 to sign the agreement on this behalf it was

for the defendant to have shown that he was obstructed while plucking the crop. In my opinion, the learned trial Court grievously erred in holding that since the plaintiffs had failed to take action in terms of the agreement and did not rescind the agreement, a presumption can be drawn that the plaintiffs No.2 and 3 must have stopped the defendant from plucking the crop.

The trial Court has also come to the conclusion that since the plaintiffs did not examine the pluckers, the packers and the other labour employed by the defendant, therefore, adverse inference should be drawn against the plaintiffs. I am unable to agree with these findings of the learned trial Court. The labour was engaged by the defendant. He admittedly harvested some portion of the apple crop. It was his allegation that he was stopped by plaintiffs No.2 and 3 from plucking the entire crop. It was for him to have proved this fact. He could have easily done so by examining the persons employed by him who had been stopped by plaintiffs No.2 and 3 while they were plucking the crop. Not only this, the defendant was in the best position to lead evidence to show till when he paid his employees. According to him, he did not engage any labour after 15.9.1993. If that was so, he could have easily proved this by brining on record the account books/ledgers/ and attendance registers.

The version of the defendant that he was not maintaining any accounts whatever and was paying the labour on day to day basis is not at all believable. No prudent person would enter into such a big business dealing involving lacs of rupees and maintain no accounts whatsoever. The defendant must have admittedly sent the apple produce of Manohar Orchard to some commission agent(s). He could have easily produced the record to show as to how many boxes were actually sent by him and during which period. None of these records have been produced. This was best evidence and this evidence was to the knowledge and within the control of the defendant. Since he has not produced or examined any such evidence, the adverse inference should have been drawn against him.

Keeping in view of the aforesaid discussion, I am of the considered view that it stands proved that the defendant had agreed to purchase apple crop from the orchard of the plaintiffs for Rs.12,50,000/-. I am also of the opinion that this entire crop was harvested by him and he was never obstructed in the harvesting by plaintiffs No.2 and 3. The defendant has only paid Rs.seven lacs to the plaintiffs against the agreed amount of Rs.twelve lacs fifty thousand, thus is liable to pay another sum of Rs.5,50,000/-. Since the suit has been filed for Rs.5,00,000/-

only, the plaintiffs are held entitled to recover a sum of Rs.5,00,000/- from the defendant.

With regard to interest no specific evidence has been led. The plaintiffs have not led any evidence with regard to the rate of interest. Admittedly, there was no contractual rate of interest provided in the agreement and no evidence has been led to show what was the interest being charged by the Nationalized Bank in relation to such commercial transaction. No doubt, the transaction is a commercial transaction, but there should have been some evidence led with regard to the rate of interest applicable in similar commercial transaction.

Keeping in view the entire facts and circumstances of the case, I am of the opinion that the ends of justice could be met in case the plaintiffs are held entitled to interest on the aforesaid sum of Rs.5,00,000/- at the rate of 6% per annum w.e.f. 24.6.1995, i.e. the date of filing of the suit till the payment/realization of the said amount. The plaintiffs are also entitled to recover the entire costs of the proceedings from the defendant.

In view of the above discussion, the appeal filed by the plaintiffs is allowed. The judgment and decree of the learned trial Court is set aside. A decree for recovery of Rs.5,00,000/-

is passed in favour of the plaintiffs (appellants herein) and against the defendant (respondent herein) with costs and future interest at the rate of 6% per annum w.e.f. 24.6.1995, the date of institution of the Civil Suit till realization of the entire amount. Decree sheet be drawn up in the aforesaid terms.

October 20, 2006 **(Deepak Gupta)**
(aks) **Judge.**